IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.144 OF 2003

Jamil Ahmed S/o. Haji
Muktar Ahmed & Anr. .. Appellants

vs.

B.M.C & Ors. .. Respondents.

Shri A.A.Kumbhakoni, Advocate for the Appellants.

Mrs.Joglekar, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 22nd March, 2005.

P.C. :

1. Admit.

2. Respondent no.1 waives service. On the prayer made by the learned Advocate for the Appellants, names of Respondent Nos.2 to 6 are permitted to be deleted. Affidavit of Appellant No.2 is taken on record and marked ‘X’ for identification. In the said affidavit the Appellants have stated that they will not press the suit in respect of the third floor of the suit building and the suit will be confined to rest of

the suit building which is subject matter of the notice impugned in the suit. It is stated that the Appellants desire to apply for regularisation of third floor. The statements made in the said affidavit are accepted.

3. The impugned notice under section 351 of the Municipal Corporation Act, 1888 alleges that there is an unauthorised construction of the 2nd and 3rd floor of the building in dispute. From 7.3.2003, there is ad-interim order operating in favour of the Appellants. The case of the Appellants is that the entire building was in existence prior to the datum line. Perusal of the Xerox copy of the insurance policy dated 14.9.1962 issued by Royal Insurance Company Limited, prima facie shows existence of the suit building consisting of ground plus two floors. In view of the said documents prima facie case is made out in so far as 2nd floor is concerned and the same deserves to be protected till the dismissal of the suit.

4. Hence I pass the following order:

i) The impugned order dated 8.1.2003 is quashed and set aside.

ii) Till the disposal of the suit both the parties will maintain status quo as of today in all respects in respect of the 2nd floor of the building in dispute.

iii) So far as 3rd floor of the building is concerned, the statement made by the Appellants is accepted and the suit stands dismissed as withdrawn in so far as the prayer made therein relates to the third floor of the suit building.

iv) If the application is made by the Appellants in prescribed form in accordance with the rules to the concerned authority of Respondent No.1 Corporation for regularisation of 3rd floor within a period of three weeks from today, the same shall be decided by the concerned authority of the Respondent No.1

Corporation within the period of 8 weeks from the receipt of the application. The decision on the said application shall be communicated to the appellant within a period of one week from date of the decision. If the application for regularisation is made within the stipulated time, both the parties will maintain status quo as of today with respect of the 3rd floor for a period of 18 weeks from today.

. Appeal is disposed of in above terms with no order as to costs.

. Parties to act on the authenticated copy of this order.

(A.S.Oka, J.)